there may have been preparation but there was not yet an attempt. The Penal Code does not apply and the English cases are applicable. By way of revision I order the conviction to be quashed and the fine, if paid, to be refunded.

Appeal dismissed. On revision conviction quashed.

ABDUL MANAP v. PUBLIC PROSECUTOR.

[Court of Appeal (Mathew, C.J., Spenser Wilkinson and Buhagiar, JJ.) May 22, 1952]

[K.L. — F.M. Criminal Appeal No. 44 of 1952]

Emergency Regulations, 1951 — Regulation 4(1)(a) and (b) — Possession of rifle and rounds of ammunition without lawful authority — Onus of proof.

The facts in this case in short are that on 30th March, 1952 whilst Security Forces were searching a plantation for terrorists, the appellant was found in some bushes and when surrounded got up and surrendered. He had round his waist a Webbing belt carrying ammunition pouches in which were a total of 40 rounds of .303 ammunition. A few feet away from where the appellant was found there was a rifle with five rounds in the magazine. In a statement subsequently made to Police (which was properly admitted in evidence) the appellant said: "I threw away my gun but the pouch which was tied to my belt was on my waist."

The appellant contended that the prosecution had failed to prove the appellant to be in unlawful possession of the rifle or ammunition and that the learned Judge was wrong when he directed the assessors that they could infer unlawful possession from the conduct of the accused as revealed in his statement. It was argued that the onus of proving want of authority rested upon the prosecution and that in the circumstances of the case that onus had not been discharged.

Held, that in cases of this kind under Regulation 4 of the Emergency Regulations, 1951 it is not an essential part of the case for the prosecution to prove the absence of lawful authority and that in the present case the onus of the negative averment was on the accused to prove that he had lawful authority to possess the arms and the ammunition.

Cases referred to:—

(1) *Lim Ah Tong v. Public Prosecutor* (1949) M.L.J. 67.

(2) *Busu bin Haji Teh v. Public Prosecutor* F. M. Criminal Appeal No. 36 of 1949 (unreported).

(3) *Rex v. Oliver* 29 Cr. App. R. 137.

(4) *Rex v. Turner* 5 M. & S. 206.

(5) *Abdul Aziz bin Jaafar v. Public Prosecutor* (1949) M.L.J. 181 at p. 183.

(6) *Williams v. Russell* (1949) L.T. 190.

COURT OF APPEAL.

M. L. R. Doraiswamy Aiyer for the appellant.

D. M. K. Grant (D.P.P.) for the Public Prosecutor.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Spenser Wilkinson, J.: — The appellant was convicted upon charges of having in his possession a rifle without lawful authority therefor, contrary to Regulation 4(1)(a) of the Emergency Regulations, 1951 and with possession of 45 rounds of ammunition, contrary to Regulation 4(1)(b) of the same Regulations.

The relevant facts can be shortly stated. On the 30th March, 1952, whilst Security Forces were searching a plantation for terrorists, the appellant was found in some bushes and when surrounded got up and surrendered. He had round his waist a Webbing belt carrying ammunition pouches in which were a total of 40 rounds of .303 ammunition. A few feet away from where the appellant was found there was a rifle with five rounds in the magazine. In a statement subsequently made to Police (which was properly admitted in evidence) the appellant said:—

"I threw away my gun but the pouch which was tied to my belt was on my waist."

The only ground of appeal argued before us was an additional ground of appeal filed by Counsel on behalf of the appellant to the effect that the prosecution had failed to prove the appellant to be in unlawful possession of the rifle or ammunition and that the learned Judge was wrong when he directed the assessors that they could infer unlawful possession from the conduct of the accused as revealed in his statement. It was argued that the onus of proving want of authority rested upon the prosecution and that in the circumstances of the case that onus had not been discharged, and the decision of the Court of Appeal in the case of *Lim Ah Tong v. Public Prosecutor*[1] was relied upon.

The prosecution relied upon a later unreported decision of the Court of Appeal in *Busu bin Haji Teh v. Public Prosecutor*[2]. The judgment in this case, after referring to the short digest of *Lim Ah Tong's*[1] case, which appears in (1949) M.L.J. 67, proceeds as follows:—

"We have read the full judgment in that case and the portion of it relied upon by Mr. Hall is underlined in the following passage:—

'Finally, there is one respect in which the learned Trial Judge's summing-up was rather too favourable to the appellant. He stated that the prosecution must prove that the fire-arm which was in the possession of the accused, was unlicensed and that he had no licence to possess it. We think this puts the matter too strongly. The prosecution should give prima facie evidence that a fire-arm in the possession of an accused is unlicensed; but if the accused in fact had a licence this is a matter as much within his own knowledge as the possession of a railway ticket would be in the circumstances described in Illustration (b) to section 106 of the Evidence Enactment, and it is therefore for the accused to show, if this be the fact, that he is licensed (see Rex v. Oliver[3]).'"

The judgment then goes on to consider the wording of the Regulation as it then was and, after citing the cases of *Rex v. Turner*[4] and *Rex v. Oliver*[3] concludes :—

"Turning now to the passage from the judgment in Lim Ah Tong v. Public Prosecutor (supra) relied on by Mr. Hall, there is no doubt from the last part of that passage that the Court of Appeal decided in that case that it is for an accused, who carries or possesses a fire-arm, to show, if it be the fact, that he is licensed to do so. We do not think the words underlined in that passage set out earlier in this judgment were intended in any way to whittle down the effect of section 106 of the Evidence Enactment, and that judgment should not be read as if they do."

At the time when *Lim Ah Tong's*[1] case was tried the emergency was only a few months old and some evidence of the absence of a licence for a fire-arm could be given by producing the register of licences in respect of the State or Settlement in which the offence took place and such evidence was usually adduced. The words "The prosecution should give *prima facie* evidence" in the judgment in that case no doubt intended to convey no more than that the practice of adducing such evidence, when available, should be continued. In view of the continuance of the emergency and the movements of terrorists it later became useless to prove that a fire-arm was unlicensed in one particular State and it would clearly be impracticable to produce all the registers in every case. We have no doubt, therefore, that the law under the Emergency Regulations, 1948 was correctly laid down in *Busu bin Haji Teh's*[2] case.

Both *Lim Ah Tong's*[1] case and *Busu bin Haji Teh's*[2] case were decided under the 1948 Regulation which differs in its wording from the present Regulation. Regulation 4(1) of the Emergency Regulations, 1948 was as follows :—

"4. (1) Any person who carries or who has in his possession or under his control —

(a) any fire-arm, not being a fire-arm which he is duly licensed to carry or possess under any other written law for the time being in force; or

(b) any ammunition or explosives without lawful authority therefor,

shall be guilty of an offence ....."

The present Regulation under which the appellant was convicted reads as follows :—

"4. (1) Any person who carries or has in his possession or under his control —

(a) any fire-arm without lawful authority therefor; or

(b) any ammunition or explosive without lawful authority therefor,

shall be guilty of an offence....."

The difference between the wording of Regulation 4(1)(a) of the 1948 Regulations and the expression "without lawful authority" was discussed in the case of *Abdul Aziz bin Jaafar v. Public Prosecutor*[5] and it was pointed out that a person might well have lawful authority although he had no licence. The question of the burden of proof was not discussed in the judgment in this case, because the arguments had been directed to other points.

It appears to us that the decision in *Busu bin Haji Teh's*[2] case applies with even greater force to the 1951 Regulations under which the appellant was convicted. In *Rex v. Oliver*[3] the Lord Chief Justice said (at page 145) :—

"We think it makes no difference at all that the order was drafted as it now appears instead of being in a form which absolutely prohibits the supply of sugar except as thereinafter provided, with a later clause providing that if a person is supplied under a licence he should be excused."

Later in the same judgment a passage from the judgment of Talbot, J., in *Williams v. Russell*[6] was quoted, apparently with approval. Talbot, J., said :—

"On the principle laid down in Rex v. Turner[4] and numerous other cases where it is an offence to do an act without lawful authority the person who sets up lawful authority must prove it and the prosecution need not prove the absence of lawful authority. I think the onus of the negative averment in this case was on the accused to prove the possession of the policy required by the statute."

This last passage deals with the exact words used in Regulation 4(1) of the Emergency Regulations, 1951.

We are, therefore, of opinion that in cases of this kind under Regulation 4 of the Emergency Regulations, 1951 it is not an essential part of the case for the prosecution to prove the absence of lawful authority and that in the present case the onus of the negative averment was on the accused to prove that he had lawful authority to possess the arms and the ammunition.

There were no other grounds upon which the conviction in this case could be criticised, and we accordingly dismissed the appeal.

Appeal dismissed.